

ECS FILE: IGA-87-54  
SECTION: Levees @ I-40 and  
S.R. 87

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE NAVAJO COUNTY FLOOD CONTROL DISTRICT

THIS AGREEMENT entered into this 31st day of March, 1988, by and between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter called "State", and the NAVAJO COUNTY FLOOD CONTROL DISTRICT, hereinafter called "District".

WHEREAS, State is empowered by Sections 28-108 and 11-952, Arizona Revised Statutes, to enter into this Agreement and has, by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and the Director of the Arizona Department of Transportation has delegated to the undersigned the authority to execute same on behalf of State; and

WHEREAS, District is empowered by Section 48-3621, Arizona Revised Statutes, to enter into this Agreement, and acting by and through its Chairman, has, by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement, and has authorized the undersigned to execute same on behalf of District; and

WHEREAS, District is currently constructing Project 429-45, a flood control levee and various improvements; and

WHEREAS, a portion of Project 429-45 consists of constructing a flood control levee on the North side of and adjacent to Westbound Interstate 40, extending the existing box culvert at I-40 Station 3132+50 (K-3 Channel) and adding slide gates, and constructing a box culvert with slide gates in I-40 Channel I-4; and

WHEREAS, a portion of Project 429-45 consists of constructing a flood control levee perpendicular to and adjoining State Route 87 on the west bank of the Little Colorado River; and

NO.	<u>12874</u>
FILED WITH SECRETARY OF STATE	
Date Filed	<u>4-28-88</u>
	<u>Jim Sheen</u> Secretary of State
By	<u>Alvare</u>

WHEREAS, both parties wish to set forth their respective responsibilities.

NOW, THEREFORE, the parties hereto covenant and agree as follows:

STATE SHALL:

1. Retain the liability it would otherwise have for traffic control and highway maintenance within its rights-of-way, except that maintenance for the entire K-3 or I-40 culvert and channel, including that portion of the culvert that runs beneath the Interstate and within the right-of-way, shall be the sole responsibility of the District.

2. Have no additional maintenance or traffic control responsibilities as a result of the construction herein referred to.

3. In the event that an emergency situation arises or it is determined that the District is not properly maintaining or operating that portion of the culvert and channel running within the highway right-of-way, then the State may, at its own expense, undertake the appropriate maintenance or other operation, as needed. In such an event, the State shall be entitled to reimbursement from the District for its costs incurred.

DISTRICT SHALL:

1. Accept all liability for functioning of drainage structures as constructed on Project 429-45. Any damages arising from construction of this project shall be solely the liability of the District and the District agrees to save and hold harmless and indemnify from loss the State and any of its employees from any and all costs and/or damages incurred by the above and from any other damage to any other person or property whatsoever, which is caused by any activity, condition or event

arising out of the performance or non-performance of the drainage structures. Costs incurred by the State or its employees shall include, in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. Have responsibility for and shall hold the State harmless for traffic control, safety precautions and for the safety of personnel involved therewith or near the State right-of-way within which the subject construction will occur.

3. Operate and maintain the flood control structures (gates) and the I-40 channels, both (K-3) and I-4, and be solely responsible for same. Operations will be on a twenty-four (24) hour, around the clock, basis as needed. An operating plan will be developed and filed with the State District Four Engineer prior to completion of the project.

4. Conduct yearly inspections of all structures, and additionally shall inspect all structures after major flows to insure structures are debris-free and fully operational.

5. Finance all levee improvements and flood control structures.

6. Maintain structures (gates) in a closed position to insure flood waters from the Little Colorado River will not encroach into populated areas. Gates will be opened to allow localized runoff to flow into the Little Colorado River when necessary.

7. In the event that the State has to undertake maintenance or operation, pursuant to the authority granted it, then the District will reimburse the State for any costs incurred thereby.

THIS AGREEMENT shall remain in full force and effect until completion of said project as aforesaid, except as to those provisions pertaining to maintenance which shall be in perpetuity; provided, however, that prior to start of

construction, this agreement may be cancelled by either party upon 30 days written notice to the other party.

All parties hereto acknowledge that this agreement is subject to cancellation by the Governor pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

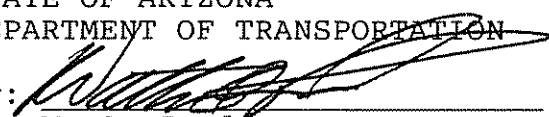
THIS AGREEMENT shall become effective on the date of filing same with the Secretary of State.

Attached hereto and incorporated herein by reference is a copy of State's resolution authorizing entry into this Agreement, a copy of the District's resolution passed by its Board of Directors, a copy of the written determination of the appropriate attorney that District is authorized under the laws of this State to enter into this Agreement and that said Agreement is in proper form, and a copy of the Attorney General's Intergovernmental Agreement Determination Letter.

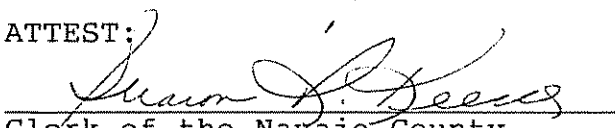
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

  
Chairman, Navajo County  
Flood Control District Board

STATE OF ARIZONA  
DEPARTMENT OF TRANSPORTATION

By:   
W. O. Ford  
State Engineer

ATTEST:

  
Clerk of the Navajo County  
Flood Control District Board

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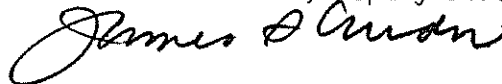
SECTION: I-40 (MP 256.18)

RESOLUTION

BE IT RESOLVED on this 9th day of July, 1987, that I, CHARLES L. MILLER, as Director, ARIZONA DEPARTMENT OF TRANSPORTATION, have determined that it is in the best interests of the State of Arizona, that the DEPARTMENT OF TRANSPORTATION, acting by and through the Highways Division, enter into an Intergovernmental Agreement with the Navajo County Flood Control District wherein the District will be responsible for operation and maintenance of the flood control channels and I-40 channels.

THEREFORE, authorization is hereby given to draft said Agreement which, upon completion, shall be submitted for approval and execution by the State Engineer.

JAMES S. CREEDON, Deputy Director



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For: Charles L. Miller, Director  
Arizona Department of  
Transportation

WH:ks

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7-27-87 10:15 AM

RESOLUTION # 81-87

RESOLUTION BY THE  
NAVAJO COUNTY FLOOD CONTROL DISTRICT BOARD

WHEREAS the District is involved in the construction of certain flood control measures in the Winslow area of Navajo County, Arizona;

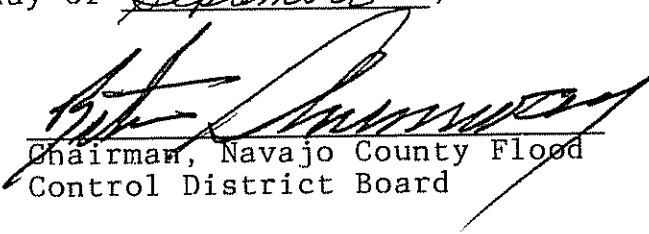
WHEREAS the District is required to enter into an agreement with the State of Arizona by and through the Arizona State Department of Transportation; and

WHEREAS the said agreement requires that the District Governing Board pass a Resolution authorizing the District's participation in said agreement.


BE IT RESOLVED that the Navajo County Flood Control District is authorized to enter into the agreement between the State of Arizona, Department of Transportation and the Navajo County Flood Control District as to the construction of certain flood control projects that are adjacent to the Little Colorado River and the I-40 Highway.

IT IS FURTHER RESOLVED that Peter D. Shumway, Chairman of the Navajo County Flood Control District Board, is authorized to sign the contract and that Sharon Keene, Clerk of the Navajo County Flood Control District Board, is authorized to Attest to the execution of the agreement.

PASSED AND ADOPTED this 21<sup>st</sup> day of September, 1987.

  
Chairman, Navajo County Flood  
Control District Board

ATTEST:


  
Clerk of the Navajo County  
Flood Control District Board

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

This Intergovernmental Agreement, which is an agreement between the State of Arizona by and through the Arizona State Department of Transportation and the Navajo County Flood Control District for the construction of certain flood control projects that are adjacent to the Little Colorado River and the I-40 Highway, has been reviewed pursuant to A.R.S. §11-952 and §11-251 by the undersigned Navajo County Attorney who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those Parties to the Agreement represented by the Navajo County Attorney.

DATED this 14 day of September, 1987.

  
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DALE K. PATTON, JR.  
NAVAJO COUNTY ATTORNEY



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT


DETERMINATION

A. G. Contract No. KR-87-0338-TRD, is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 25<sup>th</sup> day of April, 1988.

ROBERT K. CORBIN  
Attorney General

  
Assistant Attorney General  
Transportation Division